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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of: Federal-State Joint Board on Universal Service	CC Docket No. 96-45

COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OFCALIFORNIA

I. INTRODUCTION

The People of the State of California and the California Public Utilities Commission (California or CPUC) respectfully submit these comments in response to the Federal Communications Commission's (FCC or Commission) June 8, 2004 Notice of Proposed Rulemaking (*NPRM*) in the above-captioned docket. In the *NPRM*, the Commission sought comment on issues relating to the process for designating eligible telecommunications carriers (ETCs) and the Commission's rules regarding high cost universal service support.

For the reasons discussed below, California supports the Commission's adoption of permissive federal guidelines that states may use in evaluating ETC

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designation requests. California agrees that subjecting ETC applicants to more stringent and specific rules will result in a more consistent and standardized public interest evaluation of ETC applications in all states. California also believes the Commission should limit high cost universal service support to primary lines in accordance with Section 254 of the Telecommunications Act. The FCC has set forth a number of issues for comment in this *NPRM*, and the CPUC comments only on some of these issues. Silence on the other issues connotes neither agreement nor disagreement with these proposals.

II. BACKGROUND

In the *NPRM*, the Commission seeks comment on the Joint Board's recommendations on two main issues: the ETC designation process and the scope of high-cost support.[1]

With regard to the ETC designation process, the Joint Board recommended that:

1) the Commission adopt permissive federal guidelines for states to consider when evaluating ETC designation requests. These additional minimum qualifications would include: adequate financial resources, commitment and ability to provide the supported services, ability to remain functional in emergencies, consumer protection requirements, and local usage.

[1] Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (*Recommended Decision*).

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2) the Commission develop the record on ways in which state commissions may determine whether an applicant satisfies the additional minimum qualifications as part of the designation process.

3) states consider the level of federal high-cost per-line support to be received by ETCs in making public interest determinations.

4) the annual certification process be used by the states to ensure that federal universal service support is used to provide the supported services and for associated infrastructure costs.

On the issue of high–cost support, the Joint Board recommended the support be limited to a single connection that provides a subscriber access to the public telephone network. To minimize the impact on rural carriers, the Joint Board set forth a restatement proposal,[2] lump sum payment proposal,[3] and hold harmless proposal.[4]

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2 The total amount of high-cost support to an area served by a rural carrier is restated in terms of support per first line, instead of support per line. There will be no effect on the amount of support received by the rural carrier at the time support is restated. (*Recommended Decision* at par. 73)

3 Supplemental lump sum support is provided to a rural carrier to avoid any immediate effects as a result of limiting the scope of support. Under this approach, a rural carrier would receive the same amount of support on a per-line basis but would receive the support only for primary lines. For second lines, a lump sum payment would be made to compensate for the loss of support for existing second lines. High-cost support would be lost only if a carrier loses an existing primary line to a competitor. (*Recommended Decision* at par. 74)

4 This proposal does not cap per-line support for incumbent carriers and would "hold harmless" incumbent carriers from the loss of universal service support. Per line support for an ETC would freeze upon the entry of a competitor. (*Recommended Decision* at par. 75)

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III. PROPOSED CHANGES

A. ETC DESIGNATION PROCESS

In the *NPRM*, the Commission seeks comment on the Joint Board's recommendation that the Commission adopt permissive federal guidelines encouraging state commissions to consider certain additional minimum qualifications when evaluating ETC designation requests. (*NPRM*, par. 2.) The Commission believes the proposed changes in the ETC designation process are primarily dictated by the need to preserve and ensure the sustainability of the universal service fund by containing the growth in the size of the High-Cost program. Pursuant to Section 254(e) of the Telecommunications Act, "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal Universal service support."

California supports the Commission's recommendation to adopt permissive guidelines in determining whether to grant ETC status to an applicant. The inclusion of such factors as financial viability and technical capability is in the public interest in that it ensures the ETC has the resources to serve all customers within its designated service area. This is especially critical in rural areas in the event that one of the ETCs (in a two or more ETC service area) decides or is unable to continue providing telecommunications services in its designated service area. The surviving ETC should have the financial and technical capability to offer all of the universal service supported services to all the customers in the designated

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service area. California believes the adoption of financial, technical and service quality guidelines and more in-depth evaluation of an ETC application is reasonable considering the need to preserve and maintain the universal service fund. Although the Commission did not prescribe specific, measurable parameters for each of the proposed additional minimum requirements, the CPUC believe these guidelines are sufficient to enable the states to develop specific, measurable parameters to determine whether the public interest will be served by allowing several ETCs in a particular service area.

B. HIGH-COST SUPPORT

The Commission seeks comment on the Joint Board's recommendation to limit high-cost support to a single line that provides a subscriber access to the public telephone network. (*NPRM*, par. 3.) The Joint Board believes this is more consistent with the goals of Section 254 than the present system (which provides that all residential and business connections provided by ETCs are eligible for high-cost support) and is necessary to preserve the sustainability of the universal service fund.

California supports the Commission's proposal to limit high-cost support to a single connection that provides the subscriber access to the public telephone network. California believes this conforms with the original intent of universal service support. However, the CPUC recommends that before implementing this proposal, the Commission clarify the definition of primary line. For instance, is a

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primary line only one connection to the public switched network, irrespective of how many households are at the address? Can one address have several primary lines if there are several households at that particular address? Can an address that houses several businesses but one registered owner have several primary lines? If a household has several phone connections with different carriers, for instance, three lines but with different carriers, are each of these lines considered primary lines?

In addition, the Commission should establish a process or system for ensuring that high-cost support is claimed only once. This may involve the Commission's maintenance of a master database with information from all carriers that would enable the Commission to cross check lines being claimed by ETCs.

In California, universal service, a concept that basic telephone service be affordable and ubiquitously available to all members of society, is a longstanding cornerstone of the California Legislature and the California Public Utilities Commission's telecommunications policy. California's universal service goals are to: (1) ensure that basic phone service remains available and affordable to all Californians regardless of geography, language, cultural, ethnic, physical or income differences; (2) provide consumers choice among competitive telephone companies; (3) provide for the addition of new services to basic service as new services become more widely used, to avoid some individuals from having inferior access to information than others; and (4) ensure customers have access to

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sufficient information to make informed choices about basic service and universal lifeline telephone services.

California defines basic service as (1) access to a single party voice grade connection, (2) access to all inter-exchange carriers offering service in the area, (3) ability to place calls, (4) ability to receive free unlimited incoming calls, (5) free touch tone dialing, (6) lifeline rates and charges for eligible low-income customers, and (7) free access to customer service for information about Lifeline rates, service activation for termination, service repair, and billing inquiries.

In response to this commitment and in compliance with state legislation, two of the CPUC's public programs, the Universal Lifeline Telecommunications Service (ULTS) and the California High Cost Fund-B (CHCF-B) provide support to primary lines per household with income threshold as an additional criteria for ULTS support. California defines a household as the members of a residence. A residence is defined as that portion of an individual house or building or one flat or apartment occupied entirely by a single family or individual functioning as one domestic establishment. A portion of a residence exclusively used by an individual not sharing equally as a member of the domestic establishment is considered a separate dwelling unit. California believes a primary line definition based on "household" is consistent with universal service goals, enabling low-income customers, who in many cases by practical necessity must reside at a single location, individually to be eligible for the lower primary line charge for residential primary lines. Such definition would also ensure that telephone service was affordable and accessible to the most financially needy customers. Residential primary lines are subsidized to fulfill the congressional goal that residential telephone service be available and affordable to all customers. As a matter of fundamental equity, a residential customer who resides with other customers at a single location should not automatically be denied the right to the lower primary line charge when that same customer would be eligible for the lower charge if he resided alone.

The Commission agreed with the Joint Board's recommendation in the First Report and Order that support for a single connection providing the supported services would allow the "access" to telecommunications services contemplated in Section 254(b)(3) of the Telecommunications Act but deferred implementation of the Joint Board's recommendation until such time that a forward-looking cost methodology was developed. We believe the change in the current system of providing high cost support is timely considering the growth in the high cost fund, the implementation of forward-looking methodology for non-rural carriers in January 1, 2000, and the sunset of the modified embedded cost mechanism for rural carriers in mid-2006.

California believes that supporting one line per household or business is in compliance with Section 254(b)(3) of the Telecommunications Act as well as Section 254(b)(5) which provides there should be specific, predictable and

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sufficient Federal and State mechanisms to preserve and advance universal service. California believes the Commission should restrict its support to essential or basic services and prevent multiple carriers from claiming high cost support for the same customer. California believes that second, third or fourth lines in a household, whether wireline or wireless service should be a supplement to the basic, primary line. As such, the primary line should be the only line eligible for high-cost support.

1. Administrative Issues

Of the five universal service programs in California, the CHCF-B program's implementation guidelines most closely resembles the FCC's proposal of limiting support to primary lines. The CPUC, in Resolution T-16018, established procedures for certifying residential primary lines for the purposes of the CHCF-B and defines primary lines as the first line to a household. A customer self-certification process was established to certify which lines are primary and eligible for support at addresses where the carrier believes there is more than one line in service. Thus, a carrier who claims support from the CHCF-B must show proof that the line has been self-certified by the customer as a primary line in accordance with the procedures for self-certification. Even with this certification, verifying carrier's claims with respect to primary line designation (i.e., that the line is claimed only once --- and not by both the carrier and the reseller) remains a continuing challenge. Thus, the CHCF-B program is establishing a database that

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would make it possible to verify there is no duplication of support for a primary line.

2. Competition

Supporting primary lines only would enable prospective entrants to make more rational business decisions unlike the current situation where carriers seeking entry in an area may base their decisions based on incentives available to them. California believes the Commission's proposal appears to be competitively neutral as ETCs would be competing based on services offered to a prospective subscriber rather than on available incentives.

Currently, changing the high cost support to primary lines only will have little effect in California as only eighteen ILECs serving rural study areas[5] receive high-cost support. Currently, seventeen of these eighteen ILECs study areas are not open to competition. When a carrier submits an ETC application, the CPUC ensures that the applicant does not encroach on the seventeen small ILEC's Census Block Groups (CBGs) in defining its Designated Service Area.

ILECs, whether in rural areas or non-rural areas, clearly have an advantage over wireline ETC applicants as the ILEC already has an existing infrastructure. Especially in rural areas, the cost of the telecommunications wireline infrastructure is so prohibitive that it is doubtful whether wireline carriers would compete by

[5] These eighteen ILEC study areas include those served by the seventeen small ILECs and a mid-sized ILEC Citizens Telecommunications Company of California dba Frontier Communications.

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building new telecommunications infrastructure given the low population density and the resulting cost per line.

IV. CONCLUSION

California concurs with the Commission's proposal to adopt additional permissive guidelines for ETC designations. While California agrees with the Commission's shift to limit high-cost support to primary lines, we recommend the Commission clarify its definition of primary line. The CPUC also recommends the Commission defer its implementation of high-cost support to only the primary line until it has defined primary line and developed the administrative system or process to implement this change.

Respectfully submitted,

RANDOLPH WU
HELEN M. MICKIEWICZ
JONADY HOM SUN

By: ______________________________

JONADY HOM SUN

320 West 4th Street, Suite 500
Los Angeles, CA 90013
Phone: (213) 576-7046
Fax: (213) 576-7013

Attorneys for the
Public Utilities Commission
State Of California

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